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UNION LEAGUE CLUB OF THE CITY OF NEW YORK

THE PROPOSED COVENANT
FOR A
LEAGUE OF NATIONS.

ADDRESS OF HON. CHARLES E. HUGHES,
PRESIDENT OF THE CLUB,

AT A SPECIAL MEETING HELD WEDNESDAY,
MARCH 26, 1919.

MR. HUGHES said:

I speak from the standpoint of one who is earnestly desirous that institutions of international justice shall be established and that, without the sacrifice of our essential national interests, we shall co-operate in a society of nations to promote lasting peace under the reign of law.

We are not dealing with an aspiration, but with a document. The question is not whether an aspiration needs a document, but whether the document will give effect to the aspiration. We are asked not to voice an emotion, but to approve a plan.

The question is one of vital importance to the American people. It is a great American question, and should be discussed without partisan bias. If the plan is a good one, it ought to be approved regardless of its origin. If the plan is seriously defective or dangerous, its source should not save it. The question is presented in advance of the formulation of party platforms and should be considered upon its merits. Republican opposers who believe they are right should welcome Democratic support.

This counsel, of course, is for Democrats as well as for Republicans. If the latter are not to oppose because they are Republicans, it should equally be expected that the former will not support because they are Democrats. The test is not in profession, but in the candor with which the subject is treated.

I shall not attempt to review matters of mere form. It seems to be conceded that the Covenant is poorly drafted, and its most earnest supporters have severely criticised it. When Mr. Taft says that "its meaning has to be dug out and the language is ponderous and in diplomatic patois", and President Lowell says that "in places it is so obscure that the meaning is often inaccurately expressed and sometimes doubtful," that "it is easily misunderstood and has in fact been widely misunderstood," it is unnecessary to say more. The American people were entitled to a better piece of work, and at least it was a mistake to have given the impression that the document was a finished product with a good reason for its choice of expressions, when later it was necessary to excuse it as a hasty draft which required revision. Much would have been gained if at the outset a part of the time expended in its praise had been devoted to its correction.

However, we are here to deal with matters of substance and not of form, except as substance may inhere in form. While much that I have to say is necessarily a restatement of that with which you are familiar, it is only by a review of the Covenant that I am able to state the views to which my study of it has led me.

Parties. The parties are the States who are signatories to the Covenant, called the "high contracting parties", and those States who later adhere to the Covenant. It appears that in addition to the signatories, certain States which are named in the protocol (which has not been published) are to be invited to give their adherence. These States, it is implied, will be chosen by the signatories. Later, other States may be invited to adhere

to the Covenant with the assent of not less than two-thirds of the States represented in the Body of Delegates. Admission is limited to "fully self-governing countries, including dominions and colonies," and no State is to be admitted "unless it is able to give effective guarantees of its sincere intention to observe its international obligations and unless it shall conform to such principles as may be prescribed by the league in regard to its naval and military forces and armaments" (Art. VII). The body thus entitled to admit will, of course, be entitled to pass upon the qualifications of admission. I should see no objection to this arrangement provided the commitments contained in the Covenant were unobjectionable. But if the provision of Article X, as to the guaranty of the territorial integrity and existing political independence of every member of the League, were to remain in the Covenant, I should say that no new member ought to be introduced without the consent of every other member, or that a non-assenting member should be relieved from the extension of its guaranty.

While provisions as to membership might have been more clearly expressed, I find no serious question as to the effect of adherence. As Secretary Bayard said in one of his official notes in 1886:

> "The effect of adhesion to a treaty is to make the adhering power as much a party to all its provisions and responsibilities as though a like treaty had been concluded *ad hoc* between it and the other signatory. For example, were the United States to 'adhere' to the proposed treaty between Great Britain and Zanzibar and effect such an 'adhesion' in such a way as to internationally bind themselves and Zanzibar, each and every provision would necessarily be enforcible as between the United States and Zanzibar, including the assumption on the part of the United States of control over certain subjects of future arrangement between Zanzibar and any third power."

Adherents will become parties with the same effect as though they had been signatories.

Organization and Votes. The fundamental necessity of a Society of Nations is the organized opportunity for conference and provision for the peaceful settlement of disputes. Sporadic international conferences are better than none, but it is important that the machinery of conference should be provided and that there should be continuity of organization between meetings through a smaller body or council and an appropriate secretarial staff. To meet this need, the proposed plan provides for meetings of a "Body of Delegates", for an "Executive Council" and for a permanent secretariat.

The Body of Delegates is to consist of representatives of the members of the League, and at meetings of this body each member is to have one vote, but may have not more than three representatives.

The Executive Council is to consist of representatives of the United States of America, the British Empire, France, Italy and Japan, together with representatives of four other States, members of the League. The selection of the four States is to be made by the Body of Delegates on such principles and in such manner as they think fit. Pending this appointment, the Covenant is to name the States which are to be represented on the Executive Council; these names have not yet been furnished.

Meetings of the Body of Delegates are to be held at stated intervals and from time to time as occasion may require. Meetings of the Executive Council are to be held from time to time and at least once a year. A permanent secretariat is established at a place to be designated by the Covenant as the seat of the League. It is to comprise secretaries and staff under the general direction and control of the Secretary-General of the League, who is to be chosen by the Executive Council, and his appointees are subject to confirmation by the Executive Council (Arts. II, III and V).

It is to be noted that the Covenant contains no plan for the establishment of a permanent court of international justice, but it is provided that the Executive

Council shall formulate plans to this end (Art. XIV). This provision contemplates a court to which parties shall submit only such matters as they recognize to be suitable for submission to arbitration under the Covenant.

It is extraordinary that clear and specific provision should not have been made as to the vote by which the Body of Delegates and the Executive Council, respectively, shall act. This ought not to be left to inference, and the omission of an explicit statement has given rise to much criticism which could easily have been averted.

I am satisfied, however, that except as otherwise provided in the Covenant a unanimous vote would be required to make action effective. I understand that Lord Robert Cecil so stated, speaking at the Peace Conference immediately after the presentation of the Covenant by President Wilson, and I believe that his statement has not been challenged by any one concerned in the drafting of the Covenant. Certainly, no dissenting Power can ever be held to be unmindful of its obligations in case it asserts the rule of unanimity. This is the ordinary rule governing international action which rests upon the assumed equality of States, and a departure therefrom is not to be implied. Moreover, the Covenant affords internal evidence of the intention to abide by this rule, for it provides in Article IV that "all matters of procedure at meetings of the Body of Delegates or the Executive Council, including the appointment of committees to investigate particular matters, shall be regulated by the Body of Delegates or the Executive Council, and may be decided by a majority of the States represented at the meeting." This express provision, and its limitation to matters of "*procedure,*" including the appointment of committees of investigation, implies that in other matters a different rule obtains, which, of course, would mean the ordinary international rule requiring unanimity. While the point should be covered by an appropriate amendment, I think it fair to assume that this is the meaning of the Covenant.

Assuming unanimity, a question might be raised, as it is provided that the action of the parties shall be effected "through the instrumentality of a meeting" (Art. I), whether the unanimity is not simply that of those present at the meeting, either of the Executive Council or of the Body of Delegates. The intent should be made clear. But if the unanimity only of those present at the meeting were required, any State could readily protect itself by being represented.

In short, I conclude that no action can be taken in the meeting of the Body of Delegates or in the Executive Council save by unanimous consent unless the contrary is expressed or necessarily implied in the Covenant. The exceptions where less than a unanimous vote is required are these:

(1) In the admission by the Body of Delegates of new members, requiring the assent of not less than two-thirds of the States represented in that Body (Art. VII), a matter to which I have already referred.

(2) In the amendment of the Covenant, which requires ratification by three-fourths of the represented States in the Body of Delegates (Art. XXVI). This might be regarded as prejudicial to a dissenting member of the League not directly represented in the Executive Council, but as all amendments to the Covenant must also be ratified by the States whose representatives compose the Executive Council, there could be no amendment without the consent of the United States of America.

(3) Where a State is itself a party to a dispute, which is referred under Article XII and is examined either by the Executive Council or the Body of Delegates, that State is not to take part in the recommendations relating to the disposition of the dispute. Unanimity in such cases is the unanimity of others besides the disputants (Art. XV).

It may be added that aside from proceedings upon the reference of a dispute to which a State is a party, the mere fact of interest would not disqualify a State

from voting either in the Body of Delegates or in the Executive Council. There is no provision for any such disqualification except as it is involved in the provision relating to disputes, and it may be supposed that States will vote in accordance with, and in order to protect, what they conceive to be their interests.

(4) Matters of procedure, including the appointment of committees of investigation, in both the Body of Delegates and the Executive Council, may be determined by a majority vote. If there should be serious dispute as to what is merely procedural, each State would doubtless take its own view and would resist majority action against its wishes in what it conceived to be a matter of substance.

Matters of procedure, however, are frequently highly important, and the control of the personnel of committees of investigation may be of grave consequence. But it is also important that mere matters of procedure should not be unnecessarily fettered, and, even though in such matters each State is subject to the risk of being outvoted, it will have its normal influence in suitable proportion to the weight of its opinion and the value of its friendship.

In the limited field in which unanimity is not necessary, there is a manifest lack of proportion in voting power, when the States which are members of the League are considered with respect to area, population and wealth. For example, in the Body of Delegates, such States as Norway, Sweden, Denmark, Switzerland and Chile, if members of the league, would each have one vote, and the United States would have one vote. The point has also been made that Article VII states that the "fully self-governing countries," which may be admitted to the League may include "dominions and colonies," and that thus the great self-governing dominions and colonies of Great Britain would, on admission to membership, each have one vote. The subject is one of great practical difficulty because, on the one hand, of the principle of equality of States, and, on the other hand, of the reasons

for the recognition of such dominions and colonies as Canada, Australia, New Zealand and South Africa. The importance of the narrow limitation of the field in which action can be taken by a majority vote becomes apparent.

The requirement of unanimity in other matters than those which I have specified above deprives many of the provisions of the Covenant either of promise of benefit or menace of harm from any definite action where unanimity cannot be had, and reduces the Covenant in large measure to a plan for conference.

Matters Reserved for Future Decision. It is most important to distinguish between the matters that are left to future consideration and decision and the commitments contained in the Covenant that are immediately operative. As to the former, the Covenant is nothing more than a general declaration of intention which will depend for the fruition of the hopes and wishes it embodies upon the subsequent unanimous action of the member Powers.

Thus it is provided that the parties agree that "the League shall be entrusted with general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest (Art. XVIII). What shall be done is of course a matter for future decision and will depend upon consent. Again, it is provided that the parties "will endeavor to secure and maintain fair and humane conditions of labor for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and to that end agree to establish as part of the organization of the League a permanent Bureau of Labor" (Art. XX). This will be effective, like the provision of Article IX for a permanent commission to advise the League on disarmament and military and naval questions generally, so far as the establishment of the described bureau is concerned. These bureaus or commissions will serve as repositories of information, and will act in an advisory capacity. Ac-

tion by the League upon any recommendation will depend upon unanimous consent. Again, the parties agree "that provision shall be made through the instrumentality of the League to secure and maintain freedom of transit and equitable treatment for the commerce of all States members of the League, having in mind, among other things, special arrangements with regard to the necessities of the regions devastated during the War of 1914-1918" (Art. XXI). What is meant by "freedom of transit and equitable treatment for the commerce of all States" must be left to conjecture. But, whatever the clause means, it will require unanimous consent of the members of the League to translate it into anything effective.

Disarmament. The carrying out of the provision for disarmament (Art. VIII) will depend entirely upon consent. It is agreed that the Executive Council shall formulate plans for the reduction of national armaments "to the lowest point consistent with national safety and the enforcement by common action of international obligations, having special regard to the geographical situation and circumstances of each State" (*id*). The formulation of this plan is obviously a matter of substance, and not a matter of mere procedure, and hence unanimous action of the States represented in the Executive Council would be required; that is, the assent of the United States would be needed. Moreover, the Executive Council merely recommends and its recommendation would not be effective unless adopted, which means in the case of the United States that its effectiveness would depend upon the action of Congress

It is also provided that the Executive Council shall "determine for the consideration and action of the several governments what military equipment and armament is fair and reasonable in proportion to the scale of forces laid down in the programme of disarmament, and these limits, when adopted, shall not be exceeded without the permission of the Executive Council" (Art. VIII).

This paragraph distinctly provides that the determination of the Executive Council is "for the consideration and action of the several governments." It also contemplates a "scale of forces laid down in the programme of disarmament"; that is, it looks to action by the States with reference to an established proportion. The clear inference is that no State is to be tied down by its own action if the other States do not take corresponding action. In substance, then, the Article means that if the States which are members of the League actually adopt a plan for reduction of national armaments, it shall remain effective until the Executive Council otherwise permits. The Executive Council cannot otherwise permit without the assent of the United States, and so far as the plan is concerned no member of the League is bound unless all the members are bound.

I am unable to see either severity or hardship in this provision, and its promise lies in whatever prospect there may be of obtaining a unanimous agreement.

In the same Article (Art. VIII) the parties agree that the Executive Council shall advise how the evil attendant upon the manufacture by private enterprise of munitions and implements of war can be prevented, due regard being had to the necessities of those countries which are not able to manufacture for themselves the munitions and implements of war necessary for their safety. Here again the Executive Council, which acts upon unanimous vote, merely advises, and it is optional with the members of the League to accept or reject their advice.

Commitments Immediately Operative. Among these the one of first importance in relation to the *raison d'etre* of the League is the provision for the determination and adjustment of controversies.

Provision for the Peaceful Settlement of Disputes. The parties agree that "should disputes arise between them which cannot be adjusted by the ordinary processes

of diplomacy they will in no case resort to war without previously submitting the questions and matters involved either to arbitration or to inquiry by the Executive Council and until three months after the award by the arbitrators, or a recommendation by the Executive Council, and that they will not even then resort to war as against a member of the League which complies with the award of the arbitrators or the recommendation of the Executive Council." The award of the arbitrators is to be made within a reasonable time and the recommendation of the Executive Council within six months after the submission of the dispute (Art. XII).

So far as arbitration is concerned, the submission is optional and does not go beyond existing practice. The parties agree to submit to arbitration only when they recognize the dispute or difficulty to be suitable for such submission, and the court of arbitration is to be agreed upon by the parties or to be as stipulated in any convention existing between them (Art. XIII). In short, either party to the dispute may block arbitration if it considers the dispute not suitable for submission. If this Nation consents to arbitration, as an honorable nation it will, of course, abide by the award. Should another party to the controversy fail to carry out the award, the Executive Council "shall propose what steps can best be taken to give effect thereto." This, of course, contemplates only a proposal, and action is dependent upon the approval of those to whom the proposal is made.

If there arises between States which are members of the League any dispute likely to lead to rupture, which is not submitted to arbitration, the parties agree that they will refer the matter to the Executive Council (Art. XV). Notice of the existence of the dispute may be given to the Secretary-General, who is to make the necessary arrangements for full investigation and consideration. The parties agree promptly to communicate to the Secretary-General statements of their case, with all the relevant facts and papers, and the Executive Council may forth-

with direct the publication of these. If the effort of the Council leads to the settlement of the dispute, a statement is to be published indicating the nature of the dispute and of the settlement, together with appropriate explanations (*id.*). On the request of either party to the dispute, within fourteen days after the submission of the dispute, it must be referred to the Body of Delegates, or the Executive Council may so refer it at its own option. The disputants must await the recommendation of the Executive Council, or of the Body of Delegates, as the case may be, which, as already stated, must be made within six months, and must refrain from going to war for a further period of three months.

There is no further obligation upon either disputant unless (1) the report of the Executive Council or of the Body of Delegates, as the case may be, is unanimous (the disputants, of course, not voting), and unless (2) the other disputant complies with this unanimous recommendation. In short, either disputant may cause the reference of the dispute to the Body of Delegates, consisting of all the States which are members of the League, and there is no obligation assumed with respect to any recommendation that may be made unless all the States which are represented in the Body of Delegates (other than the disputants) agree to the recommendation.

There is no agreement to comply with a unanimous recommendation, the agreement being simply not to go to war against a disputant who does comply with it. If the inquiry does not result in a unanimous recommendation, or if there is a unanimous recommendation and the other party to the dispute does not comply with it, the Covenant itself implies that the disputants may go to war, if they so desire, without breach of their obligation. In such case the obligation under Article XII is fulfilled in the submission to the inquiry. If there is a unanimous recommendation and if the party refuses to comply with it, the Executive Council is to propose measures necessary to give effect to the recommendation. Here again is a pro-

posal that requires the assent, in order to be effective, of those to whom the proposal is made.

Article XVI provides the sanction for Article XII. It provides that should any of the parties break or disregard its covenants under Article XII (relating to arbitration and inquiry), it "shall thereby *ipso facto* be deemed to have committed an act of war against all the other members of the League, which hereby undertakes immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a member of the League or not."

This sanction must be examined in the light of the obligation to which it relates. It only applies in case the covenants contained in Article XII are broken. Those covenants will not be broken in case the dispute is submitted either to arbitration or to inquiry, as above stated, and the parties wait the prescribed time, unless there is either an award of the arbitrators or a unanimous recommendation by the Executive Council or Body of Delegates, as the case may be, and a resort to war by a party despite the compliance by its opponent with the award or recommendation. A case of a breach of an award will rarely arise, as arbitration lies wholly in consent, and will relate to controversies deemed to be justiciable, and awards are likely to be carried out. In other cases, it is probable that the sanction of Article XVI will rarely, if ever, be operative, as a unanimous recommendation of all the States represented in the Body of Delegates (to which the dispute must be referred upon request) as against the wishes of any influential State, is a most unlikely event. Moreover, if there should be a unanimous recommendation of the Executive Council or of the Body of Delegates, which is unsatisfactory to both disputants, and hence neither complies with it, there would be no breach of Article XII

and hence the sanction of Article XVI would not apply, provided the parties wait for three months after the recommendation is made before going to war.

In the event that there is a breach of Article XII, so as to make Article XVI applicable, it is a mistake to suppose that Article XVI would be self-executing. It is provided that the breach of Article XII shall *ipso facto* be deemed to be "an act of war against all the other members of the League." But an "act of war" is different from a state of war. It will remain for the Powers to decide whether or not they will go to war. The parties do undertake immediately to sever all trade and financial relations with the covenant-breaking State, but legislation would be necessary to carry out this provision, as, for example, in the imposition of an embargo, etc. And in the case of the United States, so far as the practical enforcement on our part of the provisions of Article XVI is concerned, the passing of the necessary legislation would depend upon the attitude of Congress.

It is apparent that the value of Article XII, and of the sanction of Article XVI, lies in the agreement to submit disputes to inquiry and to await the time required for the inquiry. Whether the time allowed for the inquiry, and the facts developed and published preliminary to or in the course of the inquiry, will lead to a "cooling off," or whether the controversy will become more bitter and finally end in war, is beyond the range of prophecy. The value of an opportunity for "cooling off," and of the requirement to submit to an inquiry and the publication of facts and papers should not be underestimated, but it is manifest that these provisions fall far short of any positive assurance against war.

It is not necessary to review separately the provisions of Article XVII, with respect to disputes between one State member of the League and another State which is not a member of the League, or between States not members of the League, as these provisions are assimilated to those applicable to disputes between members. States

not members of the League are to be invited to accept the obligations of membership in the League for the purpose of the dispute. They come under no heavier obligations. If both parties to the dispute refuse to accept the obligations of membership for the purpose stated, "the Executive Council may take such action and make such recommendations as will prevent hostilities and will result in the settlement of the dispute." This contemplates unanimous action on the part of the Executive Council, and so far as its recommendations are concerned, they will come to nothing without the assent of the members of the League to which the recommendations are submitted.

Scope of Inquiries by the League. In connection with these provisions for the peaceful settlement of disputes, should be read the sweeping description of matters with which the League may concern itself, as provided in Article XI, as follows:

> "Any war or threat of war, whether immediately affecting any of the high contracting parties or not, is hereby declared a matter of concern to the League, and the high contracting parties reserve the right to take any action that may be deemed wise and effectual to safeguard the peace of nations.
>
> "It is hereby also declared and agreed to be the friendly right of each of the high contracting parties to draw the attention of the body of delegates or of the executive council to any circumstance affecting international intercourse which threatens to disturb international peace or the good understanding between nations upon which peace depends."

This, properly understood and confined to the proper sphere of international conference, is flexible and practicable. It gives voice to the lesson of the great War. It provides the machinery for consultation, mediation and conciliation. It commits to no action, leaves the door open for the only co-operation that can properly be con-

templated; that is, the co-operation which at the time of the exigency is deemed to be advisable.

Internal Concerns. Immigration and Tariff Laws, etc. The breadth, however, of the provisions to which I have referred raises a caution, and the need of it is emphasized by the provision of Article III that at the meetings of the Executive Council "any matter within the sphere of action of the League or affecting the peace of the world may be dealt with." Important as it is that there should be broad opportunity for consultation, mediation and conciliation, it is equally important that this opportunity should not be made the occasion of intrusive inquiries into internal concerns. Attempts to make such concerns the subjects of inquiry by the League would tend to its disruption, and would be likely to breed troubles rather than to cure them. It has been said that the general words I have quoted will have appropriate limitation according to the principles of international law. But the Covenant is a new departure and it contains provisions, as, for example, with respect to labor conditions, manufacture of munitions by private enterprise, etc., which indicate that the field of inquiry is not to be limited by previous conceptions of what affects international intercourse. While the authority does not extend beyond the domain of recommendation, the jurisdiction should be properly defined, else that which is intended to heal difficulties may create them. If the United States proposes to regard her immigration laws, her tariff laws, and her laws relating to the regulation of commerce, including her coastwise traffic, as matters of her exclusive concern, then there should be appropriate qualifications of the general words of the Covenant, both with respect to the field of the League's inquiries and to the submission of disputes. Unnecessary ambiguities are not the friends of peace. The suggestion that it is unwise to refer particularly to such matters as immigration and the tariff shows conclusively that it would be the height of unwis-

dom not to refer to them. The very fact that even now, when any reasonable request should not go unheeded, we are told that, although such matters are of internal concern, reference should not be expressly made to them as belonging in that category, shows conclusively that it is not safe to trust this matter to the future. We do not wish inquiries stimulated along these lines, even though they are only for the purpose of securing recommendations, unless we propose to recognize such inquiries as appropriate. As to this matter there should be candid and explicit provision, in order that the Nation may be properly advised of what it is proposed to do. I must assume, until the contrary is established, that those who are in charge of our interests at Paris will see to it that the Covenant is suitably amended in this respect.

The Monroe Doctrine. It has been said, I understand, that the Covenant extends the Monroe Doctrine to the world. This is a singularly infelicitous and inaccurate description of the effect of the Covenant upon a doctrine which is nothing if not a distinctively national policy. The reported statement is based upon the guaranty contained in Article X with respect to territorial integrity and political independence. The provision of Article X is in itself, in my judgment, highly objectionable. But in any event such a guaranty cannot be regarded as an adequate substitute for the Monroe Doctrine. It is of the essence of the Monroe Doctrine that it declares the right of self-protection. It does not undertake to interfere with, or impair, the sovereignty of any other State, but it does seek to maintain our own security.

The best statement of it, I think, has been made by Senator Root in his address on "The Real Monroe Doctrine," and I can make no better contribution to the current discussion than to quote his words:

> "The doctrine is not international law but it rests upon the right of self-protection and that right is recognized by international law. The right is a

necessary corollary of independent sovereignty. It is well understood that the exercise of the right of self-protection may and frequently does extend in its effect beyond the limits of the territorial jurisdiction of the state exercising it. * * * The most common exercise of the right of self-protection outside of a state's own territory and in time of peace is the interposition of objection to the occupation of territory, of points of strategic military or maritime advantage or to indirect accomplishment of this effect by dynastic arrangement. * * * Of course, each state must judge for itself when a threatened act will create such a situation. If any state objects to a threatened act and the reasonableness of its objection is not assented to, the efficacy of the objection will depend upon the power behind it.

"It is doubtless true that in the adherence of the American people to the original declaration there was a great element of sentiment and of sympathy for the people of South America who were struggling for freedom, and it has been a source of great satisfaction to the United States that the course which it took in 1823 concurrently with the action of Great Britain played so great a part in assuring the right of self-government to the countries of South America. Yet is it to be observed that in reference to the South American governments, as in all other respects, the international right upon which the declaration expressly rests is not sentiment or sympathy or a claim to dictate what kind of government any other country shall have, but the safety of the United States."

Senator Root also addressed himself to the suggestion that the doctrine has been changed or enlarged. This, as he said, is a mistake. He continued:

"One apparent extension of the statement of Monroe was made by President Polk in his messages of 1845 and 1848, when he included the acquisition of territory by a European Power through cession as dangerous to the safety of the United States. It was really but stating a corollary to the doctrine of 1823 and asserting the same right of self-protection against the other American states as well as against Europe.

"The corollary has been so long and uniformly agreed to by the Government and the people of the United States that it may fairly be regarded as being now a part of the doctrine.

"But, all assertions to the contrary notwithstanding, there has been no other change or enlargement of the Monroe Doctrine since it was first promulgated. * * * It is the substance of the thing to which the nation holds, and that is and always has been that the safety of the United States demands that American territory shall remain American."

Senator Root said further:

"Since the Monroe Doctrine is a declaration based upon this nation's right of self-preservation, it can not be transmuted into a joint or common declaration by American states or any number of them. * * *

"It is plain that the building of the Panama Canal greatly accentuates the practical necessity of the Monroe Doctrine as it applies to all the territory surrounding the Caribbean or near the Bay of Panama. The plainest lessons of history and the universal judgment of all responsible students of the subject concur in teaching that the potential command of the route to and from the Canal must rest with the United States and that the vital interests of the nation forbid that such command shall pass into other hands. Certainly no nation which has acquiesced in the British occupation of Egypt will dispute this proposition. Undoubtedly as one passes to the south and the distance from the Caribbean increases, the necessity of maintaining the rule of Monroe becomes less immediate and apparent. But who is competent to draw the line? Who will say, 'To this point the rule of Monroe should apply; beyond this point, it should not'? Who will say that a new national force created beyond any line that he can draw will stay beyond it and will not in the long course of time extend itself indefinitely?

"The danger to be apprehended from the immediate proximity of hostile forces was not the sole consideration leading to the declaration. The need to separate the influences determining the development and relation of states in the new world

> from the influences operating in Europe played an even greater part. * * * The problem of national protection in the distant future is one not to be solved by the first impressions of the casual observer, but only by profound study of the forces, which, in the long life of nations, work out results. In this case the results of such a study by the best men of the formative period of the United States are supported by the instincts of the American democracy holding steadily in one direction for almost a century. The problem has not changed essentially."

I believe that these words, spoken in 1914, should be heeded now.

It is idle to say that the Covenant in its present form adequately safeguards our traditional policy. In this vital matter, there is no reason why we should trust to equivocal clauses or vague assurances. If our policy is not respected, now is the time to know this important fact. If it is respected, let it be safeguarded appropriately. There is no use in contending that the present Covenant is adequate when so strong a supporter as President Lowell has this to say:

> "The United States would be justified in asking, and in my opinion ought to ask, for a clause in the covenant that no foreign power shall hereafter acquire by conquest, purchase, or in any other way, any possession on the American continent or the islands adjacent thereto. Nor do I believe that the European members of the League would object to such a clause, because they do not want another nation to acquire military posts or naval stations in the neighborhood of their own coasts, canals or coaling stations."

Such an amendment is essential; I regard it as vital to our just interests.

Again, in order to safeguard interests that are distinctively American, I agree with Mr. Taft that there should be a further provision that "the settlement of purely American questions should be remitted primarily

to the American nations, with machinery like that of the present League, and that European nations should not intervene unless requested to do so by the American nations."

The Guaranty in Article X. This is as follows:

> "The high contracting parties shall undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all states members of the League. In case of any such aggression or in any case of any threat or danger of such aggression the Executive Council shall advise upon the means by which the obligation shall be fulfilled."

This contemplates an immediate undertaking, that is, the present assumption of the obligation as defined. The guaranty relates to the territorial integrity and political independence of *every State* that is a member of the League; the agreement is to preserve that integrity and independence as against external aggression. If this preservation, as may be expected, requires the force of arms, then we must supply the force of arms or be regarded as defaulting in our engagement.

It has been said that this guaranty should be given for the protection of the new States to be erected in Europe. But there appears to be no reason, in any event, why a guaranty of this sort should be given to all the States in the world, which may become members of the League.

I regard this guaranty as a trouble-breeder and not a peace-maker. I believe it to be unnecessary and unwise; there is little ground for supposing that it will prevent war; on the contrary, it is likely to prove illusory and to create disappointment and a sense of injury and injustice on the part of those who are led to place confidence in it.

Primarily, apart from other considerations, its inflexibility should condemn it. This Covenant is intended

to be a permanent arrangement. Even if a State could withdraw from the League, the undertaking would remain as long as membership continued, and the Covenant can be amended only if all the States whose representatives compose the Executive Council, and three-fourths of the States whose representatives compose the Body of Delegates, ratify the amendment. Unless the League is disrupted, the guaranty may be regarded as a permanent one. The guaranty makes no allowance for changes which may be advisable. It ascribes a prescience and soundness of judgment to the present Peace Conference in erecting States and defining boundaries which no body in the history of the world has ever possessed. Even as to the new States, it attempts to make permanent existing conditions, or conditions as arranged at this Conference, in a world of dynamic forces to which no one can set bounds. It gives no fair opportunity for adjustments. It is in the teeth of experience. The limitation of the words "as against external aggression" is a frail reliance; no one can foresee what the merits of particular cases may be. Nor does Article XII afford security. Even if jurisdiction could be deemed to attach under Article XII to a matter within the guaranty of Article X, there might not be, indeed it may be said that there probably would not be, a unanimous recommendation. What good reason is there for this guaranty to apply to unknown and unforeseeable contingencies? Why not leave the future to conference and decision in the light of events?

The guaranty would be unwise even if it could accomplish its apparent purpose. But I also think that it will prove to be illusory. Should there be occasion to make the promise good, not improbably it will be insisted that it is a collective guaranty. Already, it is urged in support of the guaranty that its obligation apparently rests not upon any nation individually but depends upon united action, both as to the occasion and manner of enforcement. The general tenor of the Covenant, as well as the

last clause of Article X, will be appealed to in support of this view.

Certainly, each Power will be the judge of what in good faith it should do. In the case of the United States, the guaranty will not be made good except by the action of Congress, and it will be for Congress to decide whether we are bound and what we should undertake. The course of recent debates has sufficiently indicated what the attitude of Congress is likely to be, if the resort to war pursuant to Article X is opposed to the opinion of the country. Congress not improbably will consider that it has not been put under any proper obligation to assume the unwelcome task. In such a case, the guaranty would merely serve the purpose of permitting the charge that we had defaulted in our obligation. On the other hand, if in our conception of duty, clarified by our experience in the great war, we should conclude that we should go to war to preserve the territorial integrity of another State, or in defense of liberty and civilization, we should respond with heartiness to that call of duty in the absence of Article X.

I am not unmindful of the importance of making response to the importunate demand of stricken and suffering peoples that an organized endeavor should be made to prevent the recurrence of strife. I deeply sympathize with the purpose to provide international arrangements for conference, for the judicial settlement of disputes, for conciliation, and for co-operation to the fullest extent practicable and consistent with a proper regard for our national safety. But time passes rapidly, and it is not the part of wisdom to create expectations on the part of the peoples of the world which the Covenant cannot satisfy. I think that it is a fallacy to suppose that helpful co-operation in the future will be assured by the attempted compulsion of an inflexible rule. Rather will such co-operation depend upon the fostering of firm friendships springing from an appreciation of community of ideals, interests and purposes, and such friendships

are more likely to be promoted by freedom of conference than by the effort to create hard and fast engagements.

Constitutional Questions. To avoid confusion of thought, it is absolutely necessary to bear in mind an established distinction. Treaties may be considered in two aspects, (1) with respect to the municipal law of the United States, that is, as a part of the supreme law of the land, and (2) as contracts with foreign nations. When a treaty is self-executing, that is, when it may be put into effect without the aid of legislation by Congress, it becomes a part of the law of the land and as such is subject to construction and enforcement by the courts. In this aspect, the Supreme Court resorts to the treaty for a rule of decision for the case before it, as it would to a statute, and like a statute, the treaty is subject to repeal or modification by a subsequent act of Congress. (Head-money cases, 112 U. S. 580, 599.)

In its aspect as a contract with a foreign nation, the question is one for the political department of the Government. Where the treaty by its terms requires legislation to carry it out, there is no judicial question presented until the necessary legislation has been passed. The principle was thus declared by Mr. Chief Justice Marshall in delivering the opinion of the Supreme Court in Foster *v.* Neilson (2 Pet. 253, 314):

> "Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act—the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the court."

In the present case, the provisions of the Covenant contemplate legislation. Thus, the provision of Article

XVI, with respect to the severance of trade or financial relations with a State breaking its agreement under Article XII to submit disputes to arbitration or to inquiry, is a provision which would require legislative action to carry out. If Congress passed legislation for the described purpose, and it was legislation of a character which Congress was otherwise competent to enact, no question would arise as to the constitutionality of the treaty; and if Congress refused to pass the legislation, the question of breach of the provision of the Covenant would be an international one and addressed to the political department of the Government. So, also, if by reason of the guaranty in Article X, Congress should decide to declare war, no question would arise as to the validity of the guaranty; and if Congress refused to declare war, there would be no question for the courts. It is manifest, therefore, that in the event of the ratification of the Covenant, the question whether an obligation had been created by the proper exercise of the treaty-making power would be one which Congress would determine in deciding whether it should enact legislation under Article XVI or should declare war in pursuance of Article X.

The extent to which Congress would regard itself as bound, as a matter of good faith, to enact legislation for the purpose of carrying out treaties has been the subject of debate, from time to time, since the days of Washington. Despite these debates, and notwithstanding its power to frustrate the carrying out of treaties, Congress in a host of instances has passed the necessary legislation to give them effect; and the disposition has frequently been manifested to avoid any basis for the charge of bad faith through a disregard of treaty stipulations. The Supreme Court has broadly defined the treaty power as being "unlimited except by those restraints which are found" in the Constitution "against the action of the Government or of its departments, and those arising from the nature of the Government itself and of that of the States. It would not be contended that it extends so far

as to authorize what the Constitution forbids or a change in the character of the government, or in that of one of the States, or a cession of any portion of the territory of the latter without its consent. * * * But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country." (De Geofroy v. Riggs, 133 U. S. 258, 267.)

With respect to appropriations of money, and to the enactment of legislation for the carrying out of such provisions as are within the manifest scope of the treaty-making power, there would seem to be no doubt of the recognition of the moral obligation of Congress. (1 Kent's Com. 165; Dana's Wheaton, Sec. 543.) But it is apparent to a student of our history that Congress has not recognized an authority of treaty-making power to place upon Congress the moral duty to carry out any sort of stipulation, and there have been notable remonstrances in the House of Representatives against commitments even with respect to legislation as to commercial regulations.

Congressional precedents in cases where Congress has been in accord with the policy of treaties are of slight value as a guide to the attitude of Congress in a future controversy with respect to the provisions of this Covenant. There is nothing in our history to give assurance that Congress would recognize the authority of the treaty power to bind Congress to declare war in a cause that it did not approve. The decision as to the policy, as to existence of the duty, and as to the power to create the duty, would rest with Congress. Whether or not Congress would feel itself bound to respond, or would take the position that, in so vital a matter as a resort to war, it could not be pledged in advance without its consent, is a question which must be left to the event. The discussions which have repeatedly taken place in the House of Representatives show that the question involved is a mooted one.

It is in this sense that the covenant to resort to war

under Article X, or to sever all trade and financial relations under Article XVI, presents constitutional questions. There is no such question in the sense that action by Congress could be dispensed with and the matter decided by the courts. The point is that Congress would be the judge of its obligation and would determine to its own satisfaction the question whether the treaty power could impose and had imposed upon Congress the duty to act under the provision of the covenant, although Congress believed that such action would be contrary to the interests of the country.

Foreign nations, however, might be expected to take the view that they were not concerned with our internal arrangements and that it was the obligation of the United States to see that the action claimed to have been agreed upon was taken. If that action was not taken, although Congress refused to act because it believed it was entitled to refuse, we should still be regarded as guilty of a breach of faith. It is a very serious matter for the treaty-making power to enter into an engagement calling for action by Congress unless there is every reason to believe that Congress will act accordingly. Assuming that this could be expected with respect to the legislation required by Article XVI, it is manifest that when the Covenant calls for the making of war, there can be no such assurance. And this does not mean that Congress will repudiate an admitted obligation, but that Congress may conclude that the obligation does not exist because in such a matter it could not be imposed. From such a decision, there would be no appeal.

Registration of Treaties. The provision of Article XXIII, that no treaty shall be binding unless registered, as provided in the article, presents little difficulty. The parties may observe it, if they choose, by registering their treaties, and it may be assumed that they would observe it. If, however, a treaty were subsequently made without registration, it is difficult to see upon what ground it could be deemed to be invalid as between the parties who entered into it.

Mandatories. I shall not review the provisions as to mandatories. The plan has decided merit. It does not follow, however, that the United States should assume the obligation of a mandatory in the Eastern Hemisphere. Such an undertaking would present the most serious questions. It is clear that we ought not to be put in a position where we should be bound, even morally, to accept such a designation. The right to refuse to be a mandatory should be distinctly reserved.

Withdrawal. It should also be made clear that any member of the League may withdraw at its pleasure on a specified notice.

Suggested Amendments. Aside from formal improvements, I think the Covenant should be amended as follows:

(1) By explicit provision as to the requirement of unanimity in decision.

(2) By suitable limitation as to the field of the League's inquiries and action, so as to leave no doubt that the internal concerns of States, such as immigration and tariff laws, are not embraced.

(3) By providing that no foreign power shall hereafter acquire by conquest, purchase, or in any other way, any possession on the American continent or the islands adjacent thereto.

(4) By providing that the settlement of purely American questions shall be remitted primarily to the American nations, and that European nations shall not intervene unless requested to do so by the American nations.

(5) By omitting the guaranty of Article X.

(6) By providing that no member of the League shall be constituted a mandatory without its consent, and that no European or Asiatic Power shall be constituted a mandatory of any American people.

(7) By providing that any member of the League may withdraw at its pleasure on a specified notice.

While this is being written, there are reports that amendments are being made. This is as it should be, and it may be hoped that the amendments will go far enough to meet serious objections. The important changes that are desired are not prejudicial to a sound international order. Rather will they tend to make it practicable and lasting. We can readily arrange for desirable conferences without disadvantageous commitments. And it should be remembered that the great protection against war for a considerable period of years will be found not in any forms of words that may now be adopted, however desirable these may be, but in economic conditions which are an assurance that for a considerable time at least we shall not have a recurrence of world strife. The danger now lies not in the menace of force employed to further imperial designs, but in the disorder due to the break-up and the removal of traditional restraints and the tendency to revolution within States. In making commitments, it should be remembered that while it is highly important that at this time we should do everything that is practicable to promote peace and to secure stable conditions, we should be cautious in making promises which are to be redeemed in unknown contingencies.

We can give counsel and afford substantial assistance without imperilling our safety. We are not likely to ignore our duty to civilization because we seek to maintain the integrity of our own home. We went forth to fight for liberty not because we had grown less ardent in the love of our own country, but because we were inspired by devotion to our own institutions. It was not the red flag, but the Stars and Stripes, for which we fought. And if we lose that love of country which transcends all else and makes us willing to die to preserve our country, then shall we lose the capacity and the desire to aid in protecting the liberties of others.